

Sara Antol

<p style="text-align: right;">Page 6</p> <p>1 Q. I would just like to go over a 2 couple of deposition basics with you. 3 Presumably you are familiar with many of them, 4 but a couple key ones, if you don't understand 5 any question that I ask, please just ask me to 6 repeat it. I ask that you please give 7 responses and yes and no and not shakes of the 8 head or nods or things like that for the sake 9 of the record, and if you at any point need to 10 take a break, just holler and we will take a 11 break. 12 Ms. Antol, where did you get your 13 undergraduate degree from? 14 A. Indiana University of Pennsylvania. 15 Q. And when was that? 16 A. 1983. 17 Q. And where did you get your law 18 degree from? 19 A. University of Pittsburgh. 20 Q. And that was when? 21 A. 1990. 22 Q. And then following your graduation 23 from the University of Pittsburgh Law School, 24 where did you first become employed? 25 A. Babst Calland Clements and Zomnir.</p>	<p style="text-align: right;">Page 8</p> <p>1 before I represented her. 2 Q. And how did you hear of her? 3 A. It was a referral through another 4 attorney in the firm. 5 Q. And his name? 6 A. Jim Ummer. 7 Q. And do you recall what Mr. Ummer 8 told you about the representation? 9 MR. DOUGLASS: Well, again I'm 10 going to instruct the witness to be careful not 11 to disclose any privileged information. This 12 whole deposition is a difficult deposition 13 given that Ms. Antol represented Carol Calvert, 14 and any discussions that you inquire into with 15 counsel from Babst Calland or with Ms. Calvert 16 it seems to me are privileged. 17 MR. WIERS: I would also like to 18 add for the record that Ms. Calvert has 19 recently pled guilty to federal tax evasion for 20 not paying taxes on the \$300,000 consulting 21 agreement negotiated by Ms. Antol, and we 22 believe that all conversations related to this 23 representation may fall under the crime fraud 24 exception privilege. I just want to note that 25 for the record. Do you still wish to invoke</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. And when did you leave Babst 2 Calland? 3 A. 1997. 4 Q. And where did you go from there? 5 A. Tollgrade Communications. 6 Q. And is that where you are today? 7 A. Yes. 8 Q. And what is your position there? 9 A. I'm general counsel. 10 Q. Okay. When you were at Babst 11 Calland, what kind of work did you do there? 12 A. General corporate, business law. 13 Q. Okay. And I understand at some 14 point while you were at Babst Calland, you 15 represented a woman named Carol Calvert; is 16 that correct? 17 A. Yes. 18 Q. When did you first hear of Ms. 19 Calvert? 20 A. I don't remember the exact date. 21 Q. Ballpark? 22 A. I guess -- I think that was in 23 1994. 24 Q. Was it before you represented her? 25 A. No, not much. Maybe a day or two</p>	<p style="text-align: right;">Page 9</p> <p>1 your privilege? 2 MR. DOUGLASS: Yes. 3 Q. What was the scope of your firm's 4 representation of Ms. Calvert as you understood 5 it? 6 A. It was surrounding the settlement 7 matter relating to her termination of her 8 employment. 9 Q. And termination of her employment 10 from where? 11 A. It was one of the entities that was 12 part of the AHERF group. I don't remember the 13 exact one. I think she was CEO, president of 14 that entity. 15 Q. And who was she claiming caused her 16 emotional distress? 17 THE WITNESS: Can I answer that? 18 MR. DOUGLASS: If you want to show 19 her documents that may -- to the extent you are 20 asking her for privileged information in terms 21 of communications with her client, she can't 22 disclose that. 23 MR. WIERS: And I will certainly 24 get to that. I'm just trying build up some 25 facts before we dive into it.</p>

3 (Pages 6 to 9)

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<p style="text-align: right;">Page 10</p> <p>1 Q. At any point did you become aware 2 of why Ms. Calvert chose Babst Calland for this 3 representation? 4 A. I don't recall why. I knew that 5 Mr. Ummer knew her. 6 Q. Have you ever heard of a gentleman 7 by the name ever David McConnell? 8 A. I have heard of him, yes. 9 Q. And who is Mr. McConnell? 10 A. I think he was the CFO of AHERF or 11 in the financial department there. 12 Q. Do you know if Babst Calland ever 13 represented Mr. McConnell? 14 A. I do know that they did, yes. 15 Q. And do you know if Mr. McConnell 16 referred Ms. Calvert to Babst Calland? 17 A. I don't know that. 18 Q. Did you ever have an opportunity to 19 discuss Ms. Calvert with Mr. McConnell? 20 A. No. I have never met him. 21 Q. Did anyone from Babst Calland work 22 with you on the Carol Calvert representation? 23 A. Yes. Jim Ummer some, and Mark 24 Shepard. 25 Q. And was Mark Shepard your senior or</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Apparently, yes. 2 Q. Did you keep time when you were at 3 Babst Calland? 4 A. Yes. 5 Q. And was it your practice to be as 6 accurate as possible? 7 A. Yes. 8 Q. Are you familiar with a man named 9 that Sherif Abdelhak? 10 A. Yes. 11 Q. And how do you know him? 12 A. I knew him purely through this 13 issue. I believe that Carol Calvert reported 14 to him at the time before her employment was 15 terminated. 16 Q. So he was Ms. Calvert's superior at 17 AHERF? 18 A. Yes, I think so. 19 Q. And did you have an opportunity to 20 speak with Mr. Abdelhak as part of your 21 representation of Ms. Calvert? 22 A. I believe, yes, he may have been a 23 telephone conversation. 24 Q. And do you recall when you first 25 spoke with him?</p>
<p style="text-align: right;">Page 11</p> <p>1 your junior? 2 A. Senior. 3 Q. Do you know who paid Ms. Calvert's 4 legal fees? 5 A. In looking through the documents 6 that were produced, I see that it looks as if 7 AHERF paid them, but I really didn't remember 8 that until I saw it in the documents. 9 MR. WIERS: I would like to 10 introduce as Exhibit 2169 a document that is 11 Bates stamped CLC 00013 through 17. 12 - - - - - 13 (Thereupon, Deposition Exhibit 2169 14 was marked for purposes of 15 identification.) 16 - - - - - 17 Q. Do you recognize this document, Ms. 18 Antol? 19 A. Again I saw it in the documents 20 that were produced by Babst Calland. 21 Q. And could you identify for me what 22 this document is? 23 A. It is a bill for services. 24 Q. And does it break down the services 25 at all?</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I don't. I don't recall. 2 Q. I am going to introduce -- well, 3 firstly, let me go back to this document we 4 just marked. 5 The first line references a 6 telephone conference with Mr. Abdelhak and 7 Carol Calvert. Do you recall what that was 8 about? 9 This was with Mr. Ummer. Did he at 10 any point discuss with you that conversation? 11 MR. TERUYA: Objection. 12 MR. DOUGLASS: Yeah, I mean why 13 don't you break it down. If you are asking her 14 did she participate in the conversation, 15 obviously that conversation would not be 16 privileged. If you are asking her if she had 17 discussions with Mr. Ummer concerning that 18 conversation, that would be privileged. 19 MR. WIERS: Right. 20 Q. Did you participate in that 21 conversation? 22 A. I don't recall. 23 MR. WIERS: I'm going to 24 introduce -- I would like to introduce Exhibit 25 2170. It is a letter dated February 15, 1996</p>

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<p style="text-align: right;">Page 14</p> <p>1 with Bates range CLC 0050 through 52.  2 - - - - -  3 (Thereupon, Deposition Exhibit 2170  4 was marked for purposes of  5 identification.)  6 - - - - -  7 Q. Do you recognize this document?  8 A. Yes.  9 Q. And what is this?  10 A. This was a letter we put together  11 to send to AHERF, Mr. Abdelhak, in connection  12 with potential claims that Carol Calvert had  13 against them.  14 Q. And did you write it?  15 A. You know, I can't recall if I wrote  16 it or if it was written by others, Mr. Ummer --  17 Q. But someone at Babst calland wrote  18 it?  19 A. Yes, someone at Babst Calland wrote  20 it.  21 Q. And is that your signature there on  22 both the first page -- well, just on the first  23 page?  24 A. Yes, it is.  25 Q. If I can direct your attention to</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. DOUGLASS: Again, you can  2 answer to the extent you are not violating the  3 attorney-client privilege.  4 A. I believe we did that more as a  5 courtesy to alert Mr. Abdelhak to the fact this  6 letter would be coming.  7 Q. Do you recall if Mr. Abdelhak asked  8 that you draft it?  9 A. I don't recall that. I mean if he  10 did, I didn't know that.  11 Q. And do you recall if he responded  12 to this letter at all with any comments?  13 A. No.  14 Q. Do you recall if you waited to  15 finalize the demand letter until you heard Mr.  16 Abdelhak's reaction to the draft letter?  17 A. I don't.  18 MR. WIERS: I would like to  19 introduce Exhibit Number 2171, and this is a  20 letter dated February 15, 1996. It is Bates  21 stamped PR-PLD 062-02251 through 52.  22 - - - - -  23 (Thereupon, Deposition Exhibit 2171  24 was marked for purposes of  25 identification.)</p>
<p style="text-align: right;">Page 15</p> <p>1 the first line, it says, "Please find enclosed  2 a draft of the letter we discussed." Does that  3 refresh your recollection that you may have had  4 a conversation with Mr. Abdelhak early on?  5 A. It looks as if we did, but I really  6 don't recall the conversation.  7 Q. This document looks to be a draft  8 demand letter. Is that what it looks like to  9 you?  10 A. Yes, it does.  11 Q. Was it your practice to send draft  12 demand letters?  13 MR. DOUGLASS: Objection. Was it  14 her practice in what context? I'm not sure I  15 understand the question.  16 Q. How many demand letters would you  17 say you sent during your time at Babst Calland?  18 A. Probably very few.  19 Q. Very few. And do you recall of  20 those very few how often you would send a draft  21 before you would send a final?  22 A. That probably -- I don't recall  23 ever doing it other than this time.  24 Q. And do you recall why you did it  25 this time?</p>	<p style="text-align: right;">Page 17</p> <p>1 - - - - -  2 Q. Do you recognize this letter?  3 A. Yes.  4 Q. And what is this?  5 A. It looks like the demand letter  6 that was actually sent.  7 Q. Is that your signature at the end?  8 A. Yes, it is.  9 Q. Do you recall if Mr. Abdelhak  10 responded to this final draft or this final  11 version of the letter?  12 A. I mean I'm sure he responded,  13 because we went on to negotiate a settlement  14 agreement, but what that response was, I don't  15 recall specifically.  16 Q. So his response led to a  17 negotiation?  18 A. Well, I mean a negotiation happened  19 and we did a settlement agreement, but I don't  20 remember what his response to this specific  21 letter was.  22 Q. Was the settlement negotiation face  23 to face?  24 A. No.  25 Q. Or over the phone?</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. It was over the phone.</p> <p>2 Q. And do you recall who was on that</p> <p>3 phone call?</p> <p>4 A. I know Sherif Abdelhak was, but I</p> <p>5 don't recall if anyone else was.</p> <p>6 Q. Do you recall if there was anything</p> <p>7 said about Ms. Calvert's claims during the</p> <p>8 telephone negotiation, the validity of her</p> <p>9 claims?</p> <p>10 MR. TERUYA: Objection.</p> <p>11 Q. Go ahead and answer.</p> <p>12 A. You know, I really don't recall</p> <p>13 specific discussions about that. I mean as I</p> <p>14 recall it, I think --</p> <p>15 MR. DOUGLASS: I'm just going to</p> <p>16 object to the extent that I'm not sure we even</p> <p>17 have a context for who was involved in this</p> <p>18 conversation. We know it was a telephone call.</p> <p>19 Do we know who was on the call, what the</p> <p>20 context of the call was?</p> <p>21 MR. WIERS: Well, I think we just</p> <p>22 established that Ms. Antol and Mr. Abdelhak</p> <p>23 were on the call, and I asked her if anyone</p> <p>24 else was on the call and she said she didn't</p> <p>25 recall.</p>	<p style="text-align: right;">Page 20</p> <p>1 anything today, any discussions about the</p> <p>2 validity of her claims?</p> <p>3 A. No, I don't.</p> <p>4 Q. And do you recall if at any point</p> <p>5 anyone mentioned if Ms. Calvert had seen a</p> <p>6 therapist or a doctor of any kind?</p> <p>7 MR. DOUGLASS: Any discussions with</p> <p>8 Mr. Abdelhak about that?</p> <p>9 Q. Right, during this same telephone</p> <p>10 call?</p> <p>11 A. No, I don't recall that.</p> <p>12 Q. During this same telephone call,</p> <p>13 was anything said about the relationship</p> <p>14 between Mr. Calvert and Mr. Abdelhak?</p> <p>15 MR. DOUGLASS: Mr. Calvert?</p> <p>16 Q. Ms. Calvert. Excuse me.</p> <p>17 A. Again I really don't recall whether</p> <p>18 that was discussed.</p> <p>19 Q. How about the relationship between</p> <p>20 Ms. Calvert and Mr. McConnell?</p> <p>21 A. I don't recall that.</p> <p>22 MR. WIERS: I would like to</p> <p>23 introduce Exhibit 7172, which --</p> <p>24 MR. DOUGLASS: You have had a lot</p> <p>25 of exhibits in this case.</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. DOUGLASS: I'm missed that.</p> <p>2 I'm sorry.</p> <p>3 Q. Do you recall if Ms. Calvert was on</p> <p>4 the call?</p> <p>5 A. I don't recall whether she was or</p> <p>6 not.</p> <p>7 Q. And the call was to -- the purpose</p> <p>8 of it was to negotiate a settlement?</p> <p>9 A. Right.</p> <p>10 Q. What do you recall generally about</p> <p>11 the call?</p> <p>12 A. Unfortunately, not much. That was</p> <p>13 a long time ago. I mean I guess when I see</p> <p>14 that we did a settlement agreement, it looks</p> <p>15 like we probably discussed settling.</p> <p>16 I mean I recall that -- I mean you</p> <p>17 asked if there was much discussion of claims.</p> <p>18 I don't recall that. I think the discussions</p> <p>19 probably started at the point where the parties</p> <p>20 were willing to settle. So how that came to</p> <p>21 be, I don't know, but my recollection was that</p> <p>22 it really went from a letter to settlement</p> <p>23 discussions without much in between that I knew</p> <p>24 of anyway.</p> <p>25 Q. Okay. And you don't recall</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. WIERS: Yes, we have. We were</p> <p>2 just discussing we actually have had another</p> <p>3 run up in the 4000s that were not included in</p> <p>4 the 21.</p> <p>5 Which is an agreement dated on the</p> <p>6 15th of January between AHERF and Ms. Calvert.</p> <p>7 It is Bates stamped AMS6 000153.</p> <p>8 MR. DOUGLASS: The 15th of January?</p> <p>9 MR. WIERS: 15th of February. I'm</p> <p>10 sorry. At the same time I would like to</p> <p>11 introduce Exhibit 2173, which is Bates stamped</p> <p>12 PR-PLD 062-02249.</p> <p>13 - - - - -</p> <p>14 (Thereupon, Deposition Exhibits</p> <p>15 2172 and 2173 were marked for</p> <p>16 purposes of identification.)</p> <p>17 - - - - -</p> <p>18 Q. Turning first to Exhibit 2172, do</p> <p>19 you recognize this document, Ms. Antol?</p> <p>20 A. Yes.</p> <p>21 Q. And what is this?</p> <p>22 A. It is the final settlement</p> <p>23 agreement.</p> <p>24 Q. And were you present when it was</p> <p>25 signed?</p>

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<p style="text-align: right;">Page 22</p> <p>1 A. I was present when Carol Calvert 2 signed it, but not when Sherif Abdelhak signed 3 it. 4 Q. And do you recall that, that 5 specific event happening? 6 A. I don't recall the specific event 7 happening, no. 8 Q. But you recall that you were not 9 there when AHERF signed it? 10 A. Right. 11 Q. And is that your signature on the 12 last page there? 13 A. Yes. As a witness, yes. 14 Q. And Exhibit 2173, do you recognize 15 this document? 16 A. Yes. 17 Q. And what is this? 18 A. It was the release that went along 19 with the settlement agreement. 20 Q. And were you present when this was 21 signed? 22 A. Yes. 23 Q. And is that your signature on the 24 bottom? 25 A. Yes, it is.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Right. 2 A. And I do believe that AHERF 3 generated the document in draft. So there may 4 have been some terms that were contained in 5 that document as well. 6 Q. And do you recall that Ms. Calvert 7 was paid \$1.6 million? 8 A. I know that's what the agreement 9 provided for. Whether she was actually paid, I 10 guess, is another question. 11 Q. Do you recall if Mr. Abdelhak 12 seemed to be in a hurry to settle this matter? 13 MR. DOUGLASS: Object to form. You 14 can answer. 15 MR. TERUYA: I'll object as well. 16 A. I don't really know what that 17 means. 18 Q. Did he appear eager to settle? 19 MR. TERUYA: Objection. 20 MR. DOUGLASS: Objection. 21 A. I mean he was willing to settle. 22 Q. Did you push him for more money -- 23 MR. TERUYA: Objection. 24 Q. -- do you recall? 25 A. I don't recall.</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Okay. Turning to Exhibit 2172, 2 what are the -- do you recall what the terms of 3 this agreement were? 4 A. Only by reading it. 5 Q. And by reading it, can you tell me 6 what the terms of it were? 7 MR. DOUGLASS: Well, again, I'll 8 object and say the document speaks for itself. 9 You are asking her to read the 10 document and summarize for you the terms of it? 11 MR. WIERS: I would just like to 12 get the terms of the document -- of the 13 settlement on the record. 14 MR. DOUGLASS: The document is on 15 the record. The document is an exhibit. If 16 you want to ask her specific questions about 17 specific terms, I think that would be fair. If 18 you are going to ask her to summarize the terms 19 of the settlement -- 20 MR. TERUYA: Fair enough. 21 Q. Do you recall how the terms were 22 arrived at? 23 A. I think through conversations with 24 Mr. Abdelhak, but I don't specifically remember 25 them.</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. And I believe you said that AHERF 2 actually drafted these agreements? 3 A. Yes, I believe they did. 4 Q. Do you recall who initially came up 5 with the \$1.6 million figure? 6 A. I don't recall. 7 Q. And you don't recall if that was 8 the figure that was the result of back and 9 forth? 10 A. I really don't recall that, no. 11 MR. WIERS: I would like to 12 introduce Exhibit 2174. This document is Bates 13 stamped PR-PLD 062-02247 through 48. 14 - - - - - 15 (Thereupon, Deposition Exhibit 2174 16 was marked for purposes of 17 identification.) 18 - - - - - 19 Q. Have you had a chance to look over 20 the document, Ms. Antol? 21 A. Yes. 22 Q. And do you recognize this? 23 A. Yes. 24 Q. And what is this? 25 A. This was a services consulting</p>

7 (Pages 22 to 25)



Sara Antol

<p style="text-align: right;">Page 26</p> <p>1 agreement that went along with the settlement 2 arrangement. 3 Q. And were you present when this 4 document was signed? 5 A. I don't specifically recall it. I 6 did not witness this one. 7 Q. You did not witness it by proof of 8 signature? 9 A. Right. 10 Q. But you recall generally this 11 agreement? 12 A. Yes. 13 Q. And do you recall that Ms. Calvert 14 was to be paid a total of \$300,000 over the 15 course of ten months? 16 A. Through reading this, yes. 17 Q. And do you recall how much 18 consulting Ms. Calvert was expected to do -- 19 let me rephrase. 20 Did Mr. Abdelhak or anyone else at 21 AHERF ever indicate to you how much consulting 22 Ms. Calvert was expected to do in return for 23 this \$300,000? 24 A. If I recall, it was -- not 25 specifically. I mean the idea, and this is not</p>	<p style="text-align: right;">Page 28</p> <p>1 was marked for purposes of 2 identification.) 3 - - - - - 4 Q. Do you recognize this document, Ms. 5 Antol? 6 A. It looks like a draft of the 7 services agreement, yes. 8 Q. And is that your handwriting -- 9 A. Yes, it is. 10 Q. -- on the document? 11 A. Yes. 12 Q. If you look with me at paragraph 4, 13 do you see where you have crossed out a line 14 that requires Ms. Calvert to list the hours 15 worked and any expenses claimed? 16 A. Yes. 17 Q. Did you remove that line requiring 18 Ms. Calvert to report her total hours? 19 A. I don't recall. 20 Q. Do you recall who may have asked 21 you to remove that requirement? 22 A. No, I don't. 23 Q. Do you recall any discussions 24 generally about the requirement of Ms. Calvert 25 keeping track of her total hours worked in any</p>
<p style="text-align: right;">Page 27</p> <p>1 that unusual, is that given her position, that 2 she would be available during the transition 3 period, but specifically what she would do, I 4 don't recall there being discussion relating to 5 that. 6 Q. Okay. These three contracts that I 7 have just handed to you, Exhibits 2172, 73 and 8 74, do these three documents represent the 9 agreement that you reached with Ms. Calvert to 10 the best of your knowledge? 11 A. Yes. 12 Q. Are you aware of any side 13 agreements that would modify or alter these 14 agreements? 15 A. No. 16 Q. Are you aware of any oral 17 agreements that would modify these? 18 A. No. 19 Q. Okay. We are moving right along 20 here. 21 MR. WIERS: I'm going to introduce 22 Exhibit 2175. This document is Bates stamped 23 CLC 00039 through 40. 24 - - - - - 25 (Thereupon, Deposition Exhibit 2175</p>	<p style="text-align: right;">Page 29</p> <p>1 way? 2 A. I can speculate as to why I might 3 have removed it, but I don't recall 4 specifically how that happened on this draft. 5 Q. Is there any reason to believe that 6 you were not the one that crossed that out? 7 A. I mean this was 1996. I haven't 8 been in control of these documents for all 9 these years. So, no, nothing that I know of, 10 but -- 11 Q. Do you know who William Kennedy is? 12 A. No, I don't think so. 13 Q. If I represent to you that he was 14 the attorney for AHERF who drafted the 15 settlement agreements, does that refresh your 16 recollection? 17 A. Not really. I don't know if I had 18 any direct dealing with him. I don't recall 19 that. 20 Q. Do you recall any conversations 21 with anybody, including Mr. Kennedy, about when 22 Ms. Calvert was supposed to do the consulting 23 work that was required by this agreement? 24 A. No. 25 Q. Did you have any discussions or do</p>

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Sara Antol

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## 1 AFFIDAVIT

2 The State of Ohio, )

3 ) SS:

4 County of Cuyahoga )

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8 Before me, a Notary Public in and for  
 9 said County and State, personally appeared SARA  
 10 ANTOL, who acknowledged that he/she did read  
 11 his/her transcript in the above-captioned  
 12 matter, listed any necessary corrections on the  
 13 accompanying errata sheet, and did sign the  
 14 foregoing sworn statement and that the same is  
 15 his/her free act and deed.

16 In the TESTIMONY WHEREOF, I have hereunto  
 17 affixed my name and official seal at this  
 18 day of A.D 2003.

19

20

21

22 Notary Public

23

24

25 My Commission Expires:

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## 1 DEPOSITION ERRATA SHEET

2

3 RE: OFFICIAL COMMITTEE OF UNSECURED

4 CREDITORS, ETC. VS.

5 PRICEWATERHOUSECOOPERS, LLP

6 RRS File No.: 7472

7 Deponent: SARA ANTOL

8 Deposition Date: NOVEMBER 5, 2003

9

10 To the Reporter:

11 I have read the entire transcript of my  
 12 Deposition taken in the captioned matter or the  
 13 same has been read to me. I request that the  
 14 following changes be entered upon the record  
 15 for the reasons indicated. I have signed my  
 16 name to the Errata Sheet and the appropriate  
 17 Certificate and authorize you to attach both to  
 18 the original transcript.

19

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16 (Pages 58 to 59)

**Atkinson Dep.**



**In The Matter Of:**

*AHERF v.*  
*PRICEWATERHOUSECOOPERS*

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*BARBARA ATKINSON, M.D.*  
*May 12, 2004*

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**ATKINSON, M.D., BARBARA - Vol. 1**



BARBARA ATKINSON, M.D.

<p style="text-align: right;">Page 62</p> <p>1 weren't doing as well as they were supposed to do 2 or any concerns over them? 3 MR. UNICE: Objection to form. 4 A. I don't recall anything. 5 Q. (BY MR. FRIESEN) Do you recall that a little later 6 in 1996, AHERF acquired the Forbes Hospitals in the 7 Pittsburgh area? Any recollection of that? 8 A. Vague. I remember it in general but I don't really 9 remember any specifics, and I don't even know where 10 the hospitals are. 11 Q. Do you recall anything about the reasons that 12 management gave for wanting to acquire the Forbes 13 hospitals? 14 A. No, but I believe it was by following the same 15 strategy that they'd considered was successful in 16 Philadelphia. 17 Q. The Integrated Delivery System strategy? 18 A. Yes. 19 Q. And do you recall any trustees voicing opposition 20 to that acquisition? 21 A. I don't recall. 22 Q. Do you recall AHERF entering into what were called 23 risk contracts? 24 A. Yes, but not -- I don't recall any details. 25 Q. Do you recall any details about arrangements where</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yes. 2 Q. And why was that? 3 A. Well, I, at least, I saw what it looked like 4 things -- what was happening. I mean, I could -- I 5 reviewed them each time and saw what was happening. 6 Q. Do you remember that AHERF acquired something 7 called a Graduate Health System? 8 A. Yes. 9 Q. And how did you find out about that transaction? 10 A. I think that was just an announcement, too. It 11 seemed to me it was about the same as Hahnemann, 12 but I may not have the timing of this. Was it a 13 year later? I can't remember. 14 Q. So your recollection is that there was an 15 announcement where -- 16 A. I'm not sure, but it seemed to me it was not -- 17 that I didn't first hear about it at a board 18 meeting, but I -- so I don't remember where I first 19 heard about it, but I heard an announcement that it 20 was either done or being considered. 21 Q. Did you ultimately attend a board meeting where it 22 was considered? 23 A. I don't remember. 24 Q. So you don't remember one way or the other whether 25 you were at a board meeting where you approved it?</p>
<p style="text-align: right;">Page 63</p> <p>1 AHERF would be financially responsible for a 2 defined set of people for their healthcare on a 3 contractual basis? 4 A. Well I remember that they did it, but I don't 5 remember any details of how much or what or -- 6 Q. And was that also -- 7 A. -- when. 8 Q. And was that something that was approved by the 9 board as well? 10 MR. UNICE: Object to form, lack of 11 foundation. 12 A. I don't know, I assume that you have the board 13 books and you -- I don't remember. 14 Q. (BY MR. FRIESEN) Okay. Do you recall at -- 15 withdrawn. 16 Would management periodically provide financial 17 information to the Board of Trustees of AHERF? 18 A. Yes. 19 Q. And would they provide quarterly financial 20 statements for the various entities and the AHERF 21 entity as a whole? 22 A. I believe every board meeting had some financial 23 statements. 24 Q. And did you find it helpful to you in discharging 25 your duties to read through those statements?</p>	<p style="text-align: right;">Page 65</p> <p>1 A. I didn't miss very many board meetings, so if I was 2 on the board then I'm sure I was there, but I don't 3 remember it. 4 Q. What was your understanding of why AHERF wanted to 5 acquire Graduate? 6 A. Again, to further develop the Integrated Health 7 System. 8 Q. And did that make sense to you at the time? 9 A. This one was beginning to be more of a stretch for 10 me because Graduate Hospital in and of itself was a 11 pretty strong competitor of Hahnemann, so you could 12 say on one hand that it was putting a competing 13 organization into -- competing hospital into the 14 organization. 15 All of the counter case was made to that, that 16 you could set it up so that it wouldn't compete and 17 that they could be doing different things; for 18 instance, orthopedics at Graduate and not competing 19 with orthopedics at Hahnemann and so on, that you 20 could set it up so that they would be complimentary 21 to each other and not competitive. But I found 22 this one beginning to be a bigger stretch in terms 23 of whether it was reasonable or not. 24 Q. And did you express your views as it being a 25 stretch to management at the time?</p>

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 A. I probably did, but I don't remember any details.</p> <p>2 Q. And do you remember any details of expressing that</p> <p>3 it was a stretch to any of the other trustees?</p> <p>4 A. I'm not sure.</p> <p>5 Q. Do you recall whether or not any of the other</p> <p>6 trustees were opposed to the Graduate transaction?</p> <p>7 A. I really don't remember.</p> <p>8 Q. Do you remember anyone raising, even though they</p> <p>9 might not have ultimately been opposed to it,</p> <p>10 raising any concerns about it?</p> <p>11 A. I think there might have been. I think that this</p> <p>12 one may have actually been one that there were</p> <p>13 concerns raised to, but I just don't remember any</p> <p>14 details.</p> <p>15 Q. Do you remember any concerns that were raised by</p> <p>16 anyone with respect to the process by which</p> <p>17 Graduate was acquired, specifically with respect to</p> <p>18 board approval?</p> <p>19 A. Now that you talk about it, I don't remember the</p> <p>20 details that well, but I think this one was done</p> <p>21 before the board approved. I think the board did</p> <p>22 the final approval, but I think that it really was</p> <p>23 announced before the board. And yes, I think there</p> <p>24 were people who were very concerned about the</p> <p>25 process.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Do you recall receiving this memo?</p> <p>2 A. I do.</p> <p>3 Q. Do you think this was the first time that you heard</p> <p>4 about the Graduate transaction?</p> <p>5 A. Well I may have heard about it earlier than this</p> <p>6 but not much. I think this was -- I mean, I'm not</p> <p>7 sure if it was in the news or I'd heard it directly</p> <p>8 from somebody at MCP-Hahnemann or Allegheny, but</p> <p>9 I'm sure this was the first time as board member I</p> <p>10 heard it.</p> <p>11 Q. Do you recall reading about it in the newspaper at</p> <p>12 all?</p> <p>13 A. I know it was in the newspaper but I don't recall</p> <p>14 the timing of it.</p> <p>15 Q. Okay. And when you say that you knew it was in the</p> <p>16 newspaper, do you remember reading a newspaper</p> <p>17 article, yourself, relating to the Graduate</p> <p>18 acquisition?</p> <p>19 A. After it was done or before?</p> <p>20 Q. At any time?</p> <p>21 A. I'm sure, yes.</p> <p>22 Q. Okay. Do you read the Philadelphia Inquirer, or</p> <p>23 did you at the time, regularly?</p> <p>24 A. Yes, I did.</p> <p>25 Q. Okay. It mentions in this Exhibit 2385, it</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Any recollection of who they were?</p> <p>2 A. No.</p> <p>3 Q. And you don't recall that you were in that</p> <p>4 category?</p> <p>5 A. Well I might have been in that category. I'm not</p> <p>6 sure if I expressed it at the board meeting or</p> <p>7 privately, but I think I was probably in that</p> <p>8 category as well.</p> <p>9 Q. Do you recall knowing, prior to any board approval</p> <p>10 of the Graduate transaction, what the financial</p> <p>11 condition of Graduate was, either from materials</p> <p>12 that you received in the service of AHERF or just</p> <p>13 generally from being in the medical community in</p> <p>14 Philadelphia?</p> <p>15 A. No.</p> <p>16 Q. Let me show you a document that's previously been</p> <p>17 marked 2385. This is a letter dated August 8th,</p> <p>18 1996 from Mr. Abdelhak to members of the Allegheny</p> <p>19 Boards of Trustees.</p> <p>20 If you could just read through this document,</p> <p>21 please.</p> <p>22 A. Yes. Do you want me to read the "Description of</p> <p>23 the Proposed Reorganization"?</p> <p>24 Q. If you could, yes, please.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 69</p> <p>1 mentions the Executive Committee of the AHERF</p> <p>2 Board?</p> <p>3 A. Yes.</p> <p>4 Q. At the bottom. "The AHERF Board will then review</p> <p>5 and confirm the Executive Committee's actions."</p> <p>6 At the time what was your understanding of the</p> <p>7 role of the Executive Committee of the AHERF Board</p> <p>8 as opposed to the board itself?</p> <p>9 A. Well, the Executive Committee met between board</p> <p>10 meetings, and so if there was some urgent or</p> <p>11 something, action that they could act on behalf of</p> <p>12 the board, I guess that's the only, my only...</p> <p>13 Q. Did you ever have any concerns or qualms about the</p> <p>14 Executive Committee's powers at the time?</p> <p>15 MR. UNICE: Object to form.</p> <p>16 A. No, I don't think I did.</p> <p>17 Q. (BY MR. FRIESEN) Now having looked at this</p> <p>18 memorandum, again, today, eight years later, do you</p> <p>19 recall whether you spoke to anyone after you got</p> <p>20 this memorandum about the memorandum? Did you call</p> <p>21 Mr. Abdelhak or talk to any of the other trustees</p> <p>22 about it; do you recall?</p> <p>23 A. I don't believe so. I mean, I may have talked to</p> <p>24 Mr. Abdelhak, but I doubt that I talked to other</p> <p>25 trustees about it. And I just don't remember</p>

18 (Pages 66 to 69)

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<p>1 Coopers &amp; Lybrand?</p> <p>2 A. I don't remember.</p> <p>3 Q. Do you remember any discussions at all with anyone</p> <p>4 from Coopers &amp; Lybrand while you were on the board?</p> <p>5 A. No. I think we must have -- I think the auditors</p> <p>6 probably came but I don't remember.</p> <p>7 MR. FRIESEN: Let me mark the next</p> <p>8 exhibit as 2572.</p> <p>9</p> <p>10 (Document was marked Deposition</p> <p>11 Exhibit Number 2572 for identification.)</p> <p>12</p> <p>13 Q. (BY MR. FRIESEN) It's a document, Bates numbered</p> <p>14 PR-PLD-066-00271 through 276. And it says, "1995</p> <p>15 Trustees' Evaluation" and it has Atkinson at the</p> <p>16 top. If you would just read, take a look through</p> <p>17 this.</p> <p>18 A. Okay. Okay.</p> <p>19 Q. And is that your signature on the last page?</p> <p>20 A. Yes.</p> <p>21 Q. And this is your handwriting in the document?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall filling it out, filling out this</p> <p>24 Trustees' Evaluation?</p> <p>25 A. Not specifically, no, but I'm sure I did.</p>	<p>1 Board. And if I recall what you said, you said,</p> <p>2 principally, it was to inform the Board of the</p> <p>3 academic issues in the enterprise, and to represent</p> <p>4 the interests of the faculty to the larger board</p> <p>5 members; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you also said that there were other members of</p> <p>8 the board who had more financial acumen that you</p> <p>9 did not possess and do not possess; is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. Can you remember for me any of the names of those</p> <p>12 folks who had more financial experience than you,</p> <p>13 after looking at some of the --</p> <p>14 A. If I could look back at one of the board things I</p> <p>15 could tell you, one of these board lists that --</p> <p>16 say I look at the October '97 AHERF Board.</p> <p>17 Q. Before you is Exhibit 1655, which are the minutes</p> <p>18 the of 10/30/97 AHERF Board meeting?</p> <p>19 A. Yes.</p> <p>20 Q. Take a moment to skim the member list there and</p> <p>21 tell me if that helps refresh your memory as to any</p> <p>22 of the trustees that you referenced earlier?</p> <p>23 A. Right. The ones that I would have particularly</p> <p>24 paid attention to their financial opinions or their</p> <p>25 opinions, I guess, in general, would be most of the</p>
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<p>1 Q. Prior to the deposition today, did you have any</p> <p>2 meetings or telephone conversations with either</p> <p>3 Mr. Unice over there or any of his colleagues at</p> <p>4 the law firm of Jones Day about this deposition?</p> <p>5 A. No.</p> <p>6 MR. FRIESEN: Okay, I don't have any</p> <p>7 further questions at this time. Mr. Unice will</p> <p>8 have some questions, and I may have some after he's</p> <p>9 done. Thank you very much for coming here today.</p> <p>10 THE WITNESS: Thank you.</p> <p>11</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. UNICE:</p> <p>14 Q. Doctor Atkinson, good afternoon. My name is John</p> <p>15 Unice, we met a few hours ago.</p> <p>16 A. Uh-huh.</p> <p>17 Q. I work for the law firm of Jones Day, and that firm</p> <p>18 represents the Plaintiff in this case, the Official</p> <p>19 Committee of Unsecured Creditors of AHERF.</p> <p>20 I have several questions for you today, but I</p> <p>21 promise to get you out of here as expeditiously as</p> <p>22 possible.</p> <p>23 A. Okay.</p> <p>24 Q. Mr. Friesen asked you earlier today what you</p> <p>25 thought your role was as a member of the AHERF</p>	<p>1 Allegheny trustees. David Barnes, particularly.</p> <p>2 Doug Danforth, Harry Edelman both on financial and</p> <p>3 other issues. Ira Gumberg.</p> <p>4 THE COURT REPORTER: Excuse me?</p> <p>5 THE WITNESS: Ira Gumberg, G-u-m-b-e-r-g</p> <p>6 A. Bob Palmer from the eastern region, if you will. I</p> <p>7 guess those are the main ones. Len Ebert. Those</p> <p>8 are the main ones.</p> <p>9 Q. (BY MR. UNICE) If I recall from your testimony</p> <p>10 earlier today, there's some overlap between the</p> <p>11 names you listed as more active trustees with the</p> <p>12 list you just gave me as to those who had more</p> <p>13 financial experience than you?</p> <p>14 A. Right. And I'm not really sure what the background</p> <p>15 of those trustees were, but I heard them comment on</p> <p>16 financial things so that's why I would say that.</p> <p>17 Q. As a board member at AHERF without a financial</p> <p>18 background, would you rely, then, on the expertise</p> <p>19 of those board members with financial matters?</p> <p>20 A. Yes.</p> <p>21 Q. Would you rely upon such trustees in terms of them</p> <p>22 bringing issues to the Board that they saw fit</p> <p>23 arising out of the financial information management</p> <p>24 gave them?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 114</p> <p>1 Q. You also spoke about, generally, the role of the 2 board itself. And I think you testified it was to 3 provide oversight of management and management's 4 operations of the enterprise; correct? 5 A. That's right. 6 Q. After having talked about your experience at AHERF, 7 do you recall any other general roles you saw as a 8 applying to the AHERF Board other than which you've 9 already told us? 10 A. No. 11 Q. Now in the providing of -- in the provision of 12 oversight to management, can you recall for me the 13 types of information that management would provide 14 to you that you would use to discharge those 15 duties? 16 A. There would be the financial reports and they were 17 there at every meeting. There would be climate 18 reports, if you will, on healthcare and where that 19 was moving. There would be specific reports, 20 occasionally, on programs, education or research or 21 so on. I'd say that was the basic, the basic 22 composition of board meetings. 23 Q. So it's fair to say you'd rely upon the financial 24 data and other information presented to you by 25 management in discharging your fiduciary duties?</p>	<p style="text-align: right;">Page 116</p> <p>1 interact with the auditors during the course of an 2 audit? 3 A. No, I don't know. 4 Q. And would the audit committee in some form or 5 fashion present to the board information during the 6 course of an AHERF audit? 7 A. Yes. 8 Q. What kinds of information did the audit committee 9 bring to the board's attention? 10 A. I think they brought the audited reports. I think 11 they brought a resolution of who the auditor would 12 be for the next year. 13 Q. Okay. Do you recall any other types of resolutions 14 or information the audit committee brought to the 15 board? 16 A. I don't remember. 17 Q. Can you recall for me what member or members of an 18 audit committee would typically bring that type of 19 information to the board's attention? 20 A. I believe it was David Barnes but I'm not really 21 sure. 22 Q. Do you recall what role he had on the audit 23 committee? 24 A. I don't know. I thought he was maybe chair but I 25 don't know.</p>
<p style="text-align: right;">Page 115</p> <p>1 A. That's correct. 2 Q. And you expect that information to be accurate; 3 correct? 4 A. Correct. 5 Q. Now, I understand that AHERF also had outside 6 auditors that on a yearly basis present an opinion 7 on the financial information presented for audit by 8 management? 9 MR. FRIESEN: Objection. 10 A. Yes. 11 Q. (BY MR. UNICE) Who were those auditors? 12 A. I think that was Coopers &amp; Lybrand. 13 Q. And do you recall, even generally, the process by 14 which Coopers &amp; Lybrand would involve itself in 15 auditing AHERF's financial statements? 16 A. No. 17 MR. FRIESEN: Objection. 18 A. No. 19 Q. (BY MR. UNICE) Was it your understanding as an 20 AHERF trustee, that those trustees on the audit 21 committee would have more direct interaction with 22 the auditors or the auditing process? 23 A. Yes. 24 Q. Can you explain to me your understanding in any 25 more detail of how the audit committee would</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. So at least on a annual basis Mr. Barnes could come 2 to the AHERF Board and present the year-end 3 financial statements to the board for its approval? 4 MR. FRIESEN: Objection. 5 A. Somebody came. 6 Q. (BY MR. UNICE) Okay. 7 A. But I don't remember who. 8 Q. So let me rephrase it so we're both clear. 9 A representative of the audit committee would 10 come to the board on a annual basis and present for 11 the board's approval the audited financial 12 statements? 13 A. Yes. 14 Q. And someone from the audit committee would also 15 present for the board's approval its recommendation 16 for the external auditors to be retained for the 17 next year? 18 A. Yes. 19 Q. Do you ever recall the board not approving 20 financial statements presented for audit? 21 A. I don't remember that. 22 Q. Do you ever recall not approving the audit 23 committee's recommendation regarding the 24 appointment of external auditors? 25 A. I don't.</p>



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<p style="text-align: right;">Page 118</p> <p>1 Q. I'm going to point you just to one page on</p> <p>2 Exhibit 1655. It ends on Bates 71630, and see if</p> <p>3 this refreshes your recollection as to who the</p> <p>4 individual from the audit committee would be that</p> <p>5 would present the information we talked about.</p> <p>6 A. It looks like it was Mr. Barnes.</p> <p>7 Q. And you understood that his role in the audit</p> <p>8 committee was to function as its chair?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. Do you have a general understanding of what the</p> <p>11 term "clean opinion" means in the context of an</p> <p>12 audited financial statement?</p> <p>13 A. Yes.</p> <p>14 Q. What is that understanding?</p> <p>15 A. The paragraph in the middle says that it's okay.</p> <p>16 That it has standard paragraphs at the beginning</p> <p>17 and the end, but the middle one says they don't</p> <p>18 find any substantial, something wrong.</p> <p>19 Q. Let's take a look at 1661, I think I know where</p> <p>20 you're going. Again, 1661 of the consolidated</p> <p>21 financial statements for AHERF and its affiliates</p> <p>22 in fiscal year 1996, and turn to page ending in</p> <p>23 Bates 1606.</p> <p>24 A. Yes.</p> <p>25 Q. This is a report of independent accountants</p>	<p style="text-align: right;">Page 120</p> <p>1 consolidated results of its operations, changes in</p> <p>2 net assets and cash flows for the year then ended</p> <p>3 in conformity with generally accepted accounting</p> <p>4 procedures."</p> <p>5 Q. "Accounting principles"?</p> <p>6 A. "Accounting principles."</p> <p>7 Q. Okay.</p> <p>8 A. Sorry.</p> <p>9 Q. Okay. I'm going to pin you back somewhat on one of</p> <p>10 Mr. -- well let me just start that over.</p> <p>11 As an AHERF trustee, what were your</p> <p>12 expectations of the external auditors for their</p> <p>13 work arising from the year-end audits of AHERF's</p> <p>14 financial statements?</p> <p>15 MR. FRIESEN: Objection.</p> <p>16 A. You would assume that they did exactly what they</p> <p>17 said in this letter, that they audited them, that</p> <p>18 they conducted the audit fairly, and that they gave</p> <p>19 an opinion on them.</p> <p>20 Q. (BY MR. UNICE) Okay. And if the auditors during</p> <p>21 the course of their audit work had discovered what</p> <p>22 they considered to be fraud in the presentation of</p> <p>23 the financial information given by management,</p> <p>24 would you expect the auditors to raise those</p> <p>25 concerns with the audit committee?</p>
<p style="text-align: right;">Page 119</p> <p>1 addressed to the Board of Trustees of AHERF signed</p> <p>2 by Coopers &amp; Lybrand; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And does this report represent what you believe to</p> <p>5 be, in your understanding, the clean opinion you</p> <p>6 referenced for me earlier?</p> <p>7 A. It looks like that. It's the third paragraph</p> <p>8 actually says the, presents it fairly. The fourth</p> <p>9 actually has some issues, and I'd have to go back</p> <p>10 and look at those to see whether those were</p> <p>11 substantial or not, but I assume...</p> <p>12 Q. Can you read --</p> <p>13 MR. FRIESEN: I'm not sure if the</p> <p>14 Doctor's finished her answer.</p> <p>15 A. But I would look at those that, to be sure that</p> <p>16 that was -- that those were -- whether they were</p> <p>17 substantial or not and what they actually meant,</p> <p>18 because it does point to a couple things.</p> <p>19 Q. (BY MR. UNICE) Can you read out loud for me the</p> <p>20 third paragraph.</p> <p>21 A. "In our opinion the consolidated financial</p> <p>22 statements referred to above present fairly in all</p> <p>23 material respects the consolidated financial</p> <p>24 position of Allegheny Health, Education and</p> <p>25 Research Foundation as of June 30th, 1996, and the</p>	<p style="text-align: right;">Page 121</p> <p>1 MR. FRIESEN: Objection.</p> <p>2 A. Yes.</p> <p>3 Q. (BY MR. UNICE) If the auditors had uncovered what</p> <p>4 they believed to be intentional misstatements in</p> <p>5 the financial statements presented by management</p> <p>6 for audit during the course of an audit, would you</p> <p>7 expect those concerns to be raised in the audit</p> <p>8 committee?</p> <p>9 MR. FRIESEN: Objection.</p> <p>10 A. Yes.</p> <p>11 Q. (BY MR. UNICE) If the auditors had discovered what</p> <p>12 they considered to be material misstatements in the</p> <p>13 financial statements presented for audit, would you</p> <p>14 expect them to disclose those concerns to the audit</p> <p>15 committee?</p> <p>16 MR. FRIESEN: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. (BY MR. UNICE) And matters such as those would be</p> <p>19 important to you to know as a trustee?</p> <p>20 A. Yes.</p> <p>21 Q. Why is that?</p> <p>22 A. Well because you need to -- we need, as trustees,</p> <p>23 to understand our fiduciary responsibility, which</p> <p>24 includes having appropriate financial data to base</p> <p>25 that on.</p>



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<p style="text-align: right;">Page 122</p> <p>1 Q. In your experience as an AHERF trustee, how would 2 the lack of appropriate financial information 3 prevent you from fulfilling your fiduciary duties? 4 A. I mean, I can't, I can't answer that. I don't 5 understand exactly -- I don't -- 6 Q. Okay, I'll rephrase it, I'll ask you a different 7 question. 8 But you expected the auditors, if they did 9 discover either material intentional or fraudulent 10 misstatements, to bring those issues to the concern 11 of the audit committee; correct? 12 MR. FRIESEN: Objection. 13 Q. (BY MR. UNICE) Go ahead. 14 A. Correct. 15 Q. And as an AHERF trustee, you relied upon the 16 auditors to look for those types of issues during 17 the course of an audit? 18 MR. FRIESEN: Objection. 19 A. Yes. Although that they always have a statement 20 that basically says it's -- that it's -- well, that 21 they audit within their purview -- 22 Q. (BY MR. UNICE) Sure. 23 A. You still do expect that they give you a fair 24 statement of what they find. 25 Q. Now if such concerns had been raised with the audit</p>	<p style="text-align: right;">Page 124</p> <p>1 concerns to the audit committee's attention? 2 MR. FRIESEN: Objection. 3 A. Yes. Although I don't know that they do it during 4 the course of a year. 5 Q. (BY MR. UNICE) Okay. 6 A. They do it at a, in a time frame, but, yes, I would 7 expect that they would bring it to them. 8 Q. Your understanding, during what time frame would 9 they be responsible for looking for such issues? 10 A. I thought they came in and did an audit at year 11 end. 12 Q. Okay. So Let me rephrase this so we're on the same 13 page. 14 During the course of its audit work, if the 15 auditing firm had discovered what they believed to 16 be concerns with the integrity of AHERF's financial 17 management, you would at that time expect them to 18 bring those concerns to the audit committee's 19 attention; correct? 20 MR. FRIESEN: Objection. 21 A. Yes. 22 Q. (BY MR. UNICE) And similar to my prior line of 23 questions, you would expect the audit committee in 24 that instance to conduct an investigation to get to 25 the bottom of whatever concerns the auditors had</p>
<p style="text-align: right;">Page 123</p> <p>1 committee, what is your understanding in that 2 scenario what the audit committee's 3 responsibilities would be? 4 MR. FRIESEN: Objection. 5 A. I would assume the audit committee should bring it 6 to the entire board if they're concerned. 7 Q. (BY MR. UNICE) Would you expect the audit 8 committee in that situation to investigate the 9 concerns of the auditors to get to the bottom of 10 the issue? 11 MR. FRIESEN: Objection, calls for 12 speculation. 13 Q. (BY MR. UNICE) Go ahead. 14 A. Yes. 15 Q. Would you rely upon the audit committee to conduct 16 a prudent investigation to discover the root cause 17 of the issues brought forth by the auditors? 18 MR. FRIESEN: Objection. 19 A. Yes. 20 Q. (BY MR. UNICE) If during the course of an audit -- 21 let me just change that question. 22 If during the course of the year the auditors 23 had discovered what they believed to be concerns 24 with the integrity of AHERF's financial management, 25 would you expect the auditors to bring those</p>	<p style="text-align: right;">Page 125</p> <p>1 brought to their attention; correct? 2 MR. FRIESEN: Objection. 3 A. Yes. 4 Q. (BY MR. UNICE) And then in your understanding of 5 the audit committee, a representative -- 6 THE COURT REPORTER: What committee? 7 MR. UNICE: What's that? 8 THE COURT REPORTER: What committee? 9 MR. UNICE: The audit committee, 10 a-u-d-i-t. 11 THE COURT REPORTER: Okay. 12 Q. (BY MR. UNICE) A representative of the audit 13 committee, would that bring its conclusions to the 14 full board; correct? 15 MR. FRIESEN: Objection, calls for 16 speculation. 17 A. Yes. 18 Q. (BY MR. UNICE) If the audit committee had come to 19 the AHERF parent board after such an investigation 20 with the conclusion that there had been fraud in 21 the presentation of the financial statements, would 22 that have been a matter of concern to you as a 23 board member? 24 MR. FRIESEN: Objection. 25 A. Yes.</p>

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<p style="text-align: right;">Page 126</p> <p>1 Q. (BY MR. UNICE) You would have not have ignored the</p> <p>2 conclusions of the audit committee in that</p> <p>3 instance; correct?</p> <p>4 MR. FRIESEN: Objection.</p> <p>5 A. Yes.</p> <p>6 Q. (BY MR. UNICE) Would it have been your practice as</p> <p>7 an AHERF board member to ask questions about the</p> <p>8 steps the audit committee took to investigate the</p> <p>9 concerns brought to them by the auditors?</p> <p>10 MR. FRIESEN: Objection, calls for</p> <p>11 speculation.</p> <p>12 A. I don't know.</p> <p>13 Q. (BY MR. UNICE) Do you believe that it would have</p> <p>14 been the practice of those board members with more</p> <p>15 financial experience to raise questions with</p> <p>16 respect to the investigation of the audit committee</p> <p>17 in that instance?</p> <p>18 MR. FRIESEN: Calls for even more</p> <p>19 speculation, objection.</p> <p>20 MR. UNICE: As did half of your</p> <p>21 questions.</p> <p>22 Q. (BY MR. UNICE) Go ahead.</p> <p>23 A. Yes.</p> <p>24 Q. I understand that you were never a member of the</p> <p>25 AHERF audit committee, but did you ever attend a</p>	<p style="text-align: right;">Page 128</p> <p>1 information that you were given throughout the</p> <p>2 course of the year?</p> <p>3 A. I think it was always consistent with the internal</p> <p>4 information. I don't think it was ever</p> <p>5 inconsistent.</p> <p>6 Q. What do you mean by inconsistent?</p> <p>7 A. I mean, I think that it rolled up the same as you</p> <p>8 would see on the quarterly reports earlier.</p> <p>9 Q. If the information contained in the audited</p> <p>10 financial statements were inconsistent with the</p> <p>11 quarterly information you were given, would that be</p> <p>12 a matter of concern to you as an AHERF board</p> <p>13 member?</p> <p>14 MR. FRIESEN: Objection.</p> <p>15 A. Yes.</p> <p>16 Q. (BY MR. UNICE) And why is that, Doctor Atkinson?</p> <p>17 A. Well, something would be wrong. I mean, one or the</p> <p>18 other would have -- would be wrong.</p> <p>19 Q. And in that instance would you expect the board to</p> <p>20 inquire into why there was such a discrepancy?</p> <p>21 MR. FRIESEN: Objection.</p> <p>22 A. Yes.</p> <p>23 Q. (BY MR. UNICE) And do you believe in the course of</p> <p>24 your role as an AHERF trustee, you would have</p> <p>25 ensured that the board followed the prudent course</p>
<p style="text-align: right;">Page 127</p> <p>1 meeting as an invitee or otherwise?</p> <p>2 A. I don't believe so.</p> <p>3 Q. In the course of your tenure as an AHERF trustee,</p> <p>4 did the audit committee ever inform the board that</p> <p>5 it was conducting an investigation into any</p> <p>6 concerns raised by the auditors regarding</p> <p>7 management's presentation of the financial</p> <p>8 statements?</p> <p>9 A. I don't remember anything like that.</p> <p>10 Q. Doctor Atkinson, can you explain to me how, if at</p> <p>11 all, you as an AHERF trustee used the year-end</p> <p>12 audited financial statements to assist you in</p> <p>13 performing your role?</p> <p>14 A. Well, I guess I just reviewed them, looked for</p> <p>15 data, looked for whether, what trends were, what</p> <p>16 was happening, whether it looked like things were</p> <p>17 going well, and then I listened to what</p> <p>18 explanations were for management about where we</p> <p>19 were and compared that to what I saw on the</p> <p>20 reports.</p> <p>21 Q. Did you use the audited financial statements to</p> <p>22 generally gauge the performance of AHERF?</p> <p>23 A. Yes.</p> <p>24 Q. Did you use the audited financial statements in any</p> <p>25 way as a check on the internal financial</p>	<p style="text-align: right;">Page 129</p> <p>1 necessary to resolve the inconsistencies between</p> <p>2 the two statements?</p> <p>3 MR. FRIESEN: Objection.</p> <p>4 A. It's hard to say, that's so speculation.</p> <p>5 Q. (BY MR. UNICE) But you certainly would have wanted</p> <p>6 to know of that information, as an AHERF board</p> <p>7 member?</p> <p>8 MR. FRIESEN: Objection.</p> <p>9 A. Wanted to know which information?</p> <p>10 Q. (BY MR. UNICE) You surely would have wanted to</p> <p>11 know if the auditors doing the year-end audit work</p> <p>12 had come to the conclusion that the information</p> <p>13 management had given you was not accurate?</p> <p>14 MR. FRIESEN: Objection.</p> <p>15 A. Yes, I would have wanted to know that.</p> <p>16 Q. (BY MR. UNICE) Do you recall ever seeing any data</p> <p>17 in AHERF's audited financial statements that lead</p> <p>18 you to believe that the acquisition of the Graduate</p> <p>19 Health System could have threatened AHERF's ongoing</p> <p>20 financial viability?</p> <p>21 A. I don't recall that.</p> <p>22 Q. Do you recall ever seeing anything in the audited</p> <p>23 financial statements that lead you to believe that</p> <p>24 the continuing acquisition of physician practices</p> <p>25 would threaten AHERF's ongoing financial viability?</p>

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1 A. I don't believe so.  
 2 Q. Do you remember after the bankruptcy filing AHERF  
 3 issuing a press release stating that its 1997  
 4 audited financial statements should no longer be  
 5 relied upon?  
 6 A. I don't remember that, but it might have happened.  
 7 It probably did.  
 8 Q. Buy you have no independent recollection of that?  
 9 A. I don't.  
 10 Q. Doctor Atkinson, do you recall in the fall of 1998,  
 11 AHERF decided to replace what was then  
 12 PricewaterhouseCoopers as its external auditors?  
 13 A. After, no. I think I was not part of that then.  
 14 Q. Let me show you a document that may refresh your  
 15 memory. I've handed you Exhibit 1992. It's a  
 16 four-page document Bates labeled TAC056657-CM to  
 17 661-CM.  
 18 Doctor, this exhibit is an agenda, a partial  
 19 agenda for the 8/27 1998 --  
 20 A. I guess I was still on the board then.  
 21 Q. -- AHERF meeting.  
 22 A. Uh-huh.  
 23 Q. And there are some notes here that I want to point  
 24 you to, but before I do that, as you've noted on  
 25 the first page of the exhibit under "Members

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1 Present" you're listed?  
 2 A. Uh-huh.  
 3 Q. Does this help refresh your memory at all as to any  
 4 discussions you had in the fall of 1998 regarding  
 5 the replacement of PricewaterhouseCoopers?  
 6 A. Well, I'll read the minutes, but I don't actually  
 7 remember the meeting, but it says I was there so  
 8 I'm sure I was there.  
 9 Q. Okay. Turn to the last page of this exhibit.  
 10 Again, these are not minutes, but rather an agenda  
 11 with some notes.  
 12 A. Okay.  
 13 Q. I'd like to point you to the handwritten notes  
 14 under the line item titled "Executive Session."  
 15 Just read that text to yourself.  
 16 A. Whose notes are these?  
 17 Q. I do not know. But read the text to yourself and  
 18 let me know when you're finished. And you can stop  
 19 with a note where it says that "Brenner abstained."  
 20 A. Okay.  
 21 Q. Are you done reading it?  
 22 A. Yes.  
 23 Q. Does the review of these notes refresh your memory  
 24 at all as to the decision to replace  
 25 PricewaterhouseCoopers as AHERF's external auditor?

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1 A. It looks like it was discussed but I don't remember  
 2 it.  
 3 Q. Put that aside then, ma'am.  
 4 A. (Witness Complies).  
 5 MR. UNICE: What number are we on?  
 6 THE COURT REPORTER: We're on 2573.  
 7 MR. UNICE: Okay.  
 8  
 9 (Document was marked Deposition  
 10 Exhibit Number 2573 for identification.)  
 11  
 12 Q. (BY MR. UNICE) Doctor Atkinson, you've been  
 13 handed Exhibit 2573. It's a one-page document,  
 14 Bates labeled DBRLI-LI-102899. It purports to be  
 15 an 11/4/98 letter from you to William Penn Snyder.  
 16 Review this document and let me know if you  
 17 recall it.  
 18 A. I do recall it, yes.  
 19 Q. What is this exhibit?  
 20 A. This exhibit is my letter of resignation from the  
 21 AHERF boards and the Allegheny General Board.  
 22 Q. And that's your signature?  
 23 A. Yes.  
 24 Q. So as of 11/4/98, you resigned from all AHERF  
 25 affiliated boards?

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1 A. Right.  
 2 Q. Can you recall why you made that decision?  
 3 A. This must have been close to when we were coming  
 4 out of bankruptcy. I don't remember exactly, but I  
 5 think we came out November 11th or something, but  
 6 at that point I had decided that I wanted to resign  
 7 from the boards.  
 8 Q. So based on some of the documents you reviewed  
 9 earlier, the entire tenure of you and the AHERF  
 10 board was from around June 1993 to November 1998?  
 11 A. Right.  
 12 Q. In discussing AHERF's decision to engage in  
 13 physician practice acquisitions, I think you  
 14 testified that it had always been planned that  
 15 there would be a deficit in the practice component  
 16 of the AHERF enterprise; correct?  
 17 A. They, that primary care practice component, yes.  
 18 Q. Can you recall for me the basis for your  
 19 recollection of that expected deficit?  
 20 A. I don't. I don't remember any specifics of it, but  
 21 I know that most people project that it's the  
 22 hospital admissions that make money from those  
 23 patients, that you have to see a certain number of  
 24 patients, and it's the admissions that actually  
 25 make money.

34 (Pages 130 to 133)

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1 Q. I also think you mentioned that, you thought at the  
2 time that the layoffs were necessary to help Mr.  
3 Abdelhak right the ship?  
4 A. Yes.  
5 Q. Do you recall any trustees expressing the opposite  
6 view about those layoffs?  
7 A. I don't remember, no.  
8 Q. You mentioned earlier today AHERF's engagement of  
9 the Hunter Group; do you recall that?  
10 A. Yes.  
11 Q. What's the Hunter Group?  
12 A. The Hunter Group is a consulting group that does  
13 turnarounds on hospitals and medical schools and  
14 universities that are in trouble financially.  
15 Q. Do you remember when relative to the bankruptcy  
16 AHERF engaged the Hunter Group?  
17 A. I remember that they were engaged almost right  
18 after Sharif Abdelhak was removed and Tony Sanzo  
19 was made the overall person. I think Tony engaged  
20 the Hunter Group rather quickly, and I believe that  
21 the bankruptcy was then within a few weeks of the  
22 engagement of the Hunter Group.  
23 Q. Having those events as a context, can you recall  
24 now with any more detail when Mr. Abdelhak was let  
25 go, relative to the bankruptcy?

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1 A. Oh, I think it was April, I'm not really positive.  
2 And I think it was probably about a month before  
3 the bankruptcy, maybe, something like that.  
4 Q. Okay. Did you have any discussions with any  
5 representatives of the Hunter Group for the course  
6 of their work at AHERF?  
7 A. Oh, yes. I reported to Dan Stickler of the Hunter  
8 Group.  
9 Q. Okay. Can you recall for me today the types of  
10 steps that you were involved in with the Hunter  
11 Group to help AHERF's financial condition?  
12 MR. FRIESEN: Objection.  
13 A. We were involved in review of the whole financial  
14 piece. Personally, I was for the university, and  
15 specifically, for the school of medicine. So  
16 review of everything with them, then looking to  
17 plan the new budget, and then doing due diligence  
18 with all the buyers.  
19 Q. (BY MR. UNICE) Mr. Stickler, you mentioned, was  
20 your primary contact at Hunter?  
21 A. Yes.  
22 Q. Do you recall any other individuals from that  
23 company with whom you worked?  
24 A. There was a CFO whose name I don't remember, and  
25 there were others but those two are the ones that

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1 were the most memorable, but Mr. Stickler was the  
2 main one.  
3 Q. Did you take part in the decision by AHERF to  
4 actually retain the Hunter Group, specifically?  
5 A. I don't believe so.  
6 Q. Do you know who was involved in that decision?  
7 A. I think my understanding was it was Tony Sanzo, but  
8 I'm not really sure.  
9 Q. And for the record, Mr. Sanzo was at that point the  
10 CEO and then succeeded Mr. Abdelhak?  
11 A. Yes.  
12 MR. UNICE: I'm almost through but I have  
13 about a minute and a half of tape left, so let's  
14 change it. I'm sure Jeff will have some follow-up  
15 and we'll go from there.  
16 THE VIDEOGRAPHER: Going off record,  
17 1:28 p.m.  
18  
19 (Brief Recess)  
20  
21 THE VIDEOGRAPHER: We're back on record,  
22 1:29 p.m.  
23 Q. (BY MR. UNICE) Doctor Atkinson, can you recall the  
24 length of the Hunter Group's engagement with AHERF?  
25 A. It would have been from that time when they were,

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1 just before the bankruptcy through to the end of  
2 the bankruptcy.  
3 Q. And do you have any more of a specific recollection  
4 as to what they were engaged to do for the system?  
5 A. Well, it was to run the system in the eastern  
6 region, basically, the whole system, not just the  
7 university.  
8 Q. Okay. Do you know whether or not any of the Hunter  
9 Group's efforts was focused in AHERF's western  
10 region?  
11 A. I don't believe it was but I'm not positive of  
12 that.  
13 Q. Do you recall ever forming the belief during,  
14 again, your --  
15 A. I should actually say, I just remember David  
16 Hunter. I did interact with him a little bit.  
17 Q. And who is Mr. Hunter?  
18 A. He's the Hunter of the Hunter Group, the head  
19 person that was engaged.  
20 Q. What was his role with respect to the AHERF  
21 engagement?  
22 A. I not sure. Dan Stickler was the one in charge of  
23 the eastern region. He's the oversight of the  
24 whole Hunter Group --  
25 Q. Yes.

38 (Pages 146 to 149)



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1 A. -- so in that regard he was around on occasion.  
 2 Q. Okay. Now, during the time that you were employed  
 3 by AHERF, did you ever form the belief -- do you  
 4 recall ever forming the belief that had the Hunter  
 5 Group been brought in earlier it could have done  
 6 more to right AHERF's ship?  
 7 MR. FRIESEN: Objection.  
 8 A. I don't know. I guess in retrospect I'm sorry  
 9 they weren't called in earlier; but certainly, it  
 10 would not have -- I mean, they certainly could not  
 11 have worked with Sherif Abdelhak, so it was one or  
 12 the other.  
 13 Q. (BY MR. UNICE) Did you have any discussions with  
 14 either Mr. Hunter or Mr. Stickler about whether or  
 15 not they could have done more had they been brought  
 16 in at an earlier time?  
 17 A. I don't believe so.  
 18 Q. And can you explain to me your last comment  
 19 regarding your belief that it would either had to  
 20 have been the Hunter Group or Mr. Abdelhak running  
 21 the system?  
 22 A. Sherif Abdelhak didn't listen to other people. He  
 23 needed -- I mean, he could not have a consultant  
 24 group working with him or for him, he ran the  
 25 system. Although I should say he hired consultants

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1 for specific projects, but not at the scope that  
 2 the Hunter Group did, which was essentially to do  
 3 his job in the eastern region.  
 4 Q. Sure. Was it your understanding that the Hunter  
 5 Group typically is engaged to run the system once  
 6 it's prior management had already been removed?  
 7 A. Not always. It happens sometimes, but sometimes  
 8 they're hired under somebody who's already there.  
 9 Very often that person ends up being removed  
 10 afterwards, but not always first.  
 11 MR. UNICE: At this time I don't have any  
 12 other questions, but Mr. Friesen may have a few.  
 13 MR. FRIESEN: I have just a couple  
 14 follow-up questions.  
 15  
 16 REDIRECT EXAMINATION  
 17 BY MR. FRIESEN:  
 18 Q. You testified that you would use the audited  
 19 financial statements to help you gauge the  
 20 performance of AHERF; do you remember that  
 21 testimony?  
 22 A. Yes.  
 23 Q. And would you also use, when they came out, the  
 24 quarterly unaudited financial, internal financial  
 25 statements to gauge the performance of AHERF?

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1 MR. UNICE: Objection, asked and  
 2 answered.  
 3 A. Yes.  
 4 Q. (BY MR. FRIESEN) Okay. And would it be the case  
 5 that since you would get the quarterly ones each  
 6 quarter and then at the end an audited financial  
 7 statement, that you could look at the trend to see  
 8 how things were going from looking at the previous  
 9 years' audited financial statement, and then the  
 10 next quarter and then the next quarter and then the  
 11 next quarter?  
 12 MR. UNICE: Object to form.  
 13 A. Yes.  
 14 Q. (BY MR. FRIESEN) Okay. Now, I'd like to show you  
 15 a document that has been marked as Exhibit 1656.  
 16 These are the board materials for that meeting that  
 17 you didn't attend, October 30th, 1997.  
 18 Now would it be your practice to receive the  
 19 materials, even if you turned out not to go to the  
 20 meeting?  
 21 A. Yes.  
 22 Q. And you would read them as best as you could?  
 23 A. Yes.  
 24 Q. If you go to the page beginning at 827 on the  
 25 bottom.

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1 A. Okay.  
 2 Q. And you see there's a "Draft" it says "Draft" at  
 3 the top?  
 4 A. Yes.  
 5 Q. And then it says, "Consolidated Financial  
 6 Statements for the year ended June 30th, 1997"?  
 7 A. Yes.  
 8 Q. So the fiscal year was from July 1st till June 30th  
 9 of the following year?  
 10 A. Yes.  
 11 Q. And if you go to the page ending in 831.  
 12 A. Yes.  
 13 Q. You'll see that there's a net income there of  
 14 \$21,927,000, about halfway down?  
 15 A. Oh, yes, okay.  
 16 Q. Okay. First of all, do you have any recollection  
 17 of seeing this?  
 18 A. I don't remember any specifics of seeing this, no.  
 19 Q. Okay. So you have a net income of \$21,926,000.  
 20 Now I would like you to get out, again, Exhibit  
 21 2101, which is the unaudited financial statements  
 22 for the three months ended September 30th, 1997.  
 23 A. These?  
 24 MR. UNICE: Huh-uh.  
 25 Q. (BY MR. FRIESEN) It's a four- or five-page

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1 document.  
 2 A. These are the unaudited ones?  
 3 Q. Correct.  
 4 A. Okay.  
 5 Q. Now, you'll see that the unaudited ones, the ones  
 6 in your hand, Exhibit 2101, those are for the  
 7 three months following the fiscal year 1997, which  
 8 are in the other document you have --  
 9 A. Right.  
 10 Q. -- Exhibit 1656. And you'll recall that there was  
 11 a net loss of some \$42 million for that  
 12 three months?  
 13 A. Yes.  
 14 Q. And in the previous fiscal year we just saw there  
 15 was a net income of \$21 million. Now, again, I  
 16 know that you weren't at the meeting and you didn't  
 17 recall seeing that \$42 million number, but that  
 18 trend, from a \$21 million net income for a whole  
 19 fiscal year followed by a \$42 million net loss for  
 20 the next three months, is that a trend that if you  
 21 had seen it at the time would have caused you  
 22 alarm?  
 23 MR. UNICE: Object to form.  
 24 A. Well, I would have certainly wanted to know an  
 25 explanation for it.

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1 Q. (BY MR. FRIESEN) And you would have asked the  
 2 kinds of questions that you mentioned earlier about  
 3 what it's projected to do in the future and what's  
 4 the cause of it?  
 5 A. I would assume so, yes.  
 6 Q. It's not a trend in the right direction, is it?  
 7 A. No.  
 8 MR. UNICE: Object to form.  
 9 MR. FRIESEN: Those are all the questions  
 10 that I have right now.  
 11 MR. UNICE: I don't have any more  
 12 questions for you either.  
 13 MR. FRIESEN: Wonderful.  
 14 THE WITNESS: Thank you.  
 15 MR. FRIESEN: Thank you.  
 16 THE VIDEOGRAPHER: We're going off record  
 17 at 1: --  
 18 MR. UNICE: Before we do that.  
 19 THE VIDEOGRAPHER: Sorry.  
 20 MR. UNICE: Yeah. Want to advise her  
 21 about her right to read and sign or should I?  
 22 MR. FRIESEN: Yes. You have the right to  
 23 receive a copy of the transcript and to read it,  
 24 and to let the court reporter know if there are any  
 25 transcript mistakes, meaning that the court

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1 reporter wrote something down that wasn't actually  
 2 in the record. Or, you can waive that right. It's  
 3 totally up to you. So you should let us know  
 4 whether you'd like to receive and read a copy of  
 5 the transcript and make any corrections.  
 6 THE WITNESS: I would like to do that.  
 7 MR. FRIESEN: Okay.  
 8 THE VIDEOGRAPHER: Going off record, 1:40  
 9 p.m.  
 10  
 11 (Deposition concluded at 1:44 p.m.)  
 12  
 13  
 14  
 15  
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 17  
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 8 BARBARA ATKINSON, M.D.  
 9  
 10  
 11  
 12 Subscribed and sworn to before me this \_\_\_\_\_ day of  
 13 \_\_\_\_\_, 2004.  
 14  
 15  
 16 My Commission Expires:  
 17  
 18  
 19 NOTARY PUBLIC  
 20  
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**Barnes Dep.**

**In The Matter Of:**

***AHERF v.  
PRICEWATERHOUSECOOPERS L.L.P.***

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***J. DAVID BARNES  
July 8, 2003***

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Page 2

1 VOLUME 1  
2 VIDEOTAPE DEPOSITION OF J. DAVID BARNES,  
3 a witness, called by the Defendant for examination,  
4 in accordance with the Federal Rules of Civil  
5 Procedure, taken by and before JoAnn M. Brown, RMR,  
6 CRR, a Court Reporter and Notary Public in and for  
7 the Commonwealth of Pennsylvania, at the offices of  
8 MANION McDONOUGH & LUCAS, 14th Floor, USX Tower,  
9 Pittsburgh, PA 15219, on Tuesday, July 8, 2003,  
10 commencing at 9:00 a.m.

11 APPEARANCES:  
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ALSO PRESENT:  
Jake Mercatoris, Videographer  
Duane Cranston

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1 - - - -  
2 P-R-O-C-E-E-D-I-N-G-S  
3 - - - -

4 THE VIDEOGRAPHER: Good morning.  
5 This is the video operator speaking, Jake  
6 Mercatoris, for Manhattan Reporters of New  
7 York, New York.

8 Today is Tuesday, July 8, 2003, and  
9 the time is 8:59 a.m. We are at the offices of  
10 Manion, McDonough & Lucas in Pittsburgh,  
11 Pennsylvania to take the video deposition of  
12 J. David Barnes in the matter of the Official  
13 Committee of Unsecured Creditors of the  
14 Allegheny Health, Education & Research  
15 Foundation versus PriceWaterhouseCoopers in the  
16 United States District Court District for  
17 Western District of Pennsylvania.

18 Will counsel please introduce  
19 themselves?

20 MS. MEADEN: Laura Meaden from Jones  
21 Day on behalf of the plaintiff. With me will  
22 be Richard Whitney, also of Jones Day.

23 MR. RYAN: Antony Ryan from Cravath  
24 Swaine & Moore, LLP representing the defendant,  
25 PriceWaterhouseCoopers, LLP, and with me is

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1 Duane Cranston.

2 MR. MCCLENAHAN: I'm David  
3 McClenahan. I represent the witness,  
4 Mr. Barnes.

5 THE VIDEOGRAPHER: Thank you. Will  
6 the Court Reporter please swear in the witness?

7 - - - -  
8 J. DAVID BARNES,  
9 being first duly sworn,  
10 was examined and testified as follows:

11 - - - -  
12 EXAMINATION  
13 - - - -

14 BY MR. RYAN:

15 Q. Good morning, Mr. Barnes.

16 A. Good morning.

17 Q. Could you please state your full name for the  
18 record?

19 A. John David Barnes.

20 Q. And you go by David?

21 A. Yes.

22 Q. And could you provide us, please, with your  
23 address?

24 A. What address do you want?

25 Q. Home address will be fine.

J. DAVID BARNES

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1 A. Why don't I give you my office address. I  
2 think that would be better.  
3 Q. All right. Go ahead.  
4 A. What is it? 4101 One Mellon Bank Center,  
5 Pittsburgh, Pennsylvania 15258, I believe.  
6 Q. What education have you had since high school?  
7 A. I went to college. I went to law school.  
8 Q. Did you study accounting at all?  
9 A. A course here and there, but I'm not an expert  
10 by a long shot.  
11 Q. And would you mind quickly running through for  
12 us what employment you've had?  
13 A. I assume you mean significant employment, just  
14 not any old thing?  
15 Q. Yes. Yes, sir.  
16 A. Okay. I was in the army for two or three years  
17 during, I guess, the Korean War, and then I was  
18 discharged, then I went to work for Mellon  
19 Bank, and I worked there till I retired.  
20 Q. All right. And when did you retire from Mellon  
21 Bank?  
22 A. 1987.  
23 Q. And when you retired, what was your job title?  
24 A. Chairman.  
25 Q. And how long were you chairman of Mellon Bank?

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1 A. I don't know exactly.  
2 Q. Was it a number of years?  
3 A. It was probably five years. Something like  
4 that.  
5 Q. And when you say chairman, was that chairman of  
6 the board?  
7 A. Yes.  
8 Q. Did you also hold a management title such as  
9 president or CEO or such?  
10 A. At that point, as CEO.  
11 Q. So you were both chairman of the board and CEO?  
12 A. Well, I don't regard those as two separate  
13 functions, but, yes.  
14 Q. And so in all, you worked at Mellon Bank for a  
15 period of 30 years or more?  
16 A. Yes.  
17 Q. What boards of directors or boards of trustees  
18 have you served on?  
19 MR. MCCLLENHAN: Do you mean ever?  
20 MR. RYAN: Yes.  
21 A. I can't recollect ever.  
22 Q. All right. Well, are there ones that you can  
23 recall?  
24 A. I can give you some.  
25 Q. Sure.

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1 A. But that's not the same as ever.  
2 Let's see. I've been on the board of  
3 the University of Pittsburgh. I was on the  
4 board of the Pittsburgh Child Guidance Center.  
5 I was on the board of Maxus Energy Company in  
6 Texas. I was on the board of Diamond Shamrock  
7 Corporation. I was on the board of the Ellis  
8 School, and there's some more, but I can't  
9 think of them just right off.  
10 Q. All right. And you were on the board of Mellon  
11 Bank too?  
12 A. Of course.  
13 Q. Did you stay on the board of Mellon Bank after  
14 1987?  
15 A. No.  
16 Q. And were you on the board of the Allegheny  
17 Health, Education & Research Foundation?  
18 A. Yes.  
19 Q. And is it okay if I use the term AHERF to refer  
20 to that?  
21 A. Yes.  
22 Q. When did you join the board of AHERF?  
23 A. I don't recollect.  
24 Q. Do you remember whether it was before or after  
25 you retired in 1987?

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1 A. I do not.  
2 Q. Were you on the board of affiliates of AHERF?  
3 A. Generally not. In other words, I was on the --  
4 one exception -- I think the AIHG board for a  
5 very short period of time, I believe.  
6 Q. AIHG was the Allegheny Integrated Health Group?  
7 A. I think so.  
8 Q. That was a group that purchased practices of  
9 physicians?  
10 A. I think in the western end of the state, yes.  
11 Q. How did it come about that you joined the AHERF  
12 board?  
13 A. Mr. Snyder, who was the chairman of the AHERF  
14 board, asked me if I'd join the board.  
15 Q. How did you know Mr. Snyder?  
16 A. Well, I've lived in Pittsburgh for 40 years,  
17 and I know people. I don't know how I knew  
18 him.  
19 Q. Have you had business dealings with him?  
20 A. I don't think so.  
21 Q. Do you know him on a social basis?  
22 A. Yes.  
23 Q. Do you recall who was the chief executive  
24 officer of AHERF when you were asked to join  
25 the AHERF board?

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1 goes to the board is if you make a major  
2 business strategic change. I suppose generally  
3 major real estate transactions go to the board.  
4 If you're going to buy -- when U.S. Steel built  
5 this building, I presume that went to the U.S.  
6 Steel board, although I don't know in fact that  
7 it did, nor do I know that it's necessary that  
8 it goes.

9 I suppose, really, to come up with a  
10 good answer here, one has to talk about what  
11 goes to the board of necessity, which I don't  
12 know that I can outline for you, and then what  
13 just goes in any given enterprise as a matter  
14 of habit. That probably, I would guess, varies  
15 enormously from business A to business B. Not  
16 much of an answer.

17 Q. I'm not trying to ask you anything about  
18 statutes or regulations or legal rules or  
19 anything of that type.

20 Let me try to approach my question  
21 this way: You have extensive experience in  
22 business, don't you?

23 A. Um-hum.

24 Q. And you have extensive experience serving on a  
25 number of boards, do you not?

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1 through some kind of deliberative process,  
2 aren't they?

3 MR. MCCLENAHAN: Object to the form  
4 of the question. There are at least three of  
5 them there. You can answer if you can.

6 THE WITNESS: I'm confused between  
7 you guys' conversations.

8 MR. MCCLENAHAN: Can you ask a single  
9 question? You asked about three.

10 MR. WHITNEY: Let me just interpose  
11 the observation that now that I've finally  
12 figured out where this is going, I object to  
13 the question as being overly hypothetical and  
14 overly general.

15 MR. MCCLENAHAN: Do you have a  
16 question?

17 MR. RYAN: Yes, I do.

18 BY MR. RYAN:

19 Q. In your experience in business serving on  
20 boards, what process of review does a board go  
21 through in reviewing a major strategic decision  
22 proposed by management?

23 A. Well, in my experience, presentations of some  
24 kind or other are made at which the management  
25 spells out to the board what it wants to do.

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1 A. Um-hum.

2 Q. And my question to you is what role does a  
3 board play in what you just described as a  
4 major strategic decision for the organization?

5 MR. MCCLENAHAN: Again, you're still  
6 talking about hypothetically in American  
7 business?

8 MR. RYAN: I'm talking about in the  
9 witness' experience in American business, yes.  
10 Not hypothetically, in the witness's  
11 experience.

12 A. What was the question?

13 Q. What role does the board play in major  
14 strategic decisions?

15 MR. MCCLENAHAN: Object to the form  
16 of the question. You can answer it if you can.

17 A. Well, I think generally the board approves  
18 major strategic decisions. Where the rubber  
19 hits the road is the definition of what's a  
20 major strategic decision.

21 Q. And when you say that the board approves a  
22 decision of that type, what do they have to do  
23 before they approve it? They're not just  
24 supposed to rubber stamp what management  
25 proposes, are they? They're supposed to go

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1 Normally, the financial data is critically  
2 important, and the board says yea or nay.

3 Q. And while you were serving on the AHERF board,  
4 was it your understanding that for a major  
5 strategic decision, the board of trustees was  
6 supposed to critically review management  
7 presentations?

8 A. Yes.

9 MR. WHITNEY: Objection. Vague.

10 Q. And did that, in fact, occur while you were on  
11 the AHERF board?

12 A. As best I recollect, it did.

13 Q. In your time of service on the AHERF board,  
14 were you also a member of committees of the  
15 board?

16 A. Yes, I was.

17 Q. Were you on the audit committee?

18 A. Yes, I was.

19 Q. Were you the chairman of the audit committee?

20 A. For a time, I was.

21 Q. How did it come to be that you served on the  
22 AHERF audit committee?

23 A. Mr. Snyder, I guess, asked me to.

24 Q. Did he tell you why he wanted you to serve on  
25 the AHERF audit committee?